

HC letter  
1/27/00

AA 6-00 Ford, Mark  
VAR 99-0485

USA-S-1829-641

RECEIVED

FEB 29 2000

CHESAPEAKE BAY  
CRITICAL AREA COMMISSION

N/F

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 1999-0485-V

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IN RE: MARK FORD

FIRST ASSESSMENT DISTRICT

DATE HEARD: FEBRUARY 10, 2000

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ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

ZONING ANALYST: CHARLENE MORGAN

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DATE FILED: FEBRUARY 25, 2000

### **PLEADINGS**

Mark Ford, the applicant, seeks a variance (1999-0485-V) to permit a dwelling and well with less setbacks and buffer than required on property located along the north side of Pennington Court, southeast of West Shoreham Beach Road, Edgewater.

### **PUBLIC NOTIFICATION**

The case was advertised in accordance with the provisions of the County Code. Mr. Ford initially testified that the property was posted for 14 days prior to the hearing. However, Ann Ellis, an area resident, established the date of posting as February 1, 2000. Later in his testimony, Mr. Ford conceded that he relied on others to post the property. The formalities of posting are not treated lightly by this office. Had I been aware of the situation prior to the hearing, this case would have been continued. It is only because the hearing was well attended that I am able to conclude that there was adequate public notice of the application. For any property coming before this office in the future, the applicant is admonished that he is personally responsible for posting and maintaining the sign(s) for at least 14 days.

### **FINDINGS AND CONCLUSIONS**

The applicant owns unimproved property with a street address of 1411 Pennington Court, in the subdivision of West Shoreham, Edgewater. The property comprises 19,870 square feet and is zoned R-2 residential with a Chesapeake Bay

Critical Area designation as Limited Development Area (LDA). The applicant proposes to construct a 26' X 40' single-family dwelling within the 100-foot buffer to tidal wetlands.<sup>1</sup>

The Anne Arundel County Code, Article 28, Section 1A-104(a)(1) establishes a minimum 100-foot buffer from tidal wetlands. Accordingly, the proposal necessitates a variance to impact the buffer.

Charlene Morgan, zoning analyst with the Department of Planning and Code Enforcement, testified that property was platted in 1954 and is therefore considered grandfathered for purposes of the Critical Area regulations. She stated that the applicant is proposing a minimum sized dwelling set at the building restriction line to minimize the impact to the buffer. The Chesapeake Bay Critical Area Commission's comment letter dated January 27, 2000 recommended minimizing the extent of clearing and mitigation at 3:1 ratio. By way of conclusion, Ms. Morgan supported the application, conditioned on reducing the clearing to the extent possible and mitigation at a 3:1 ratio with plantings in the buffer as the first priority.

Mr. Ford agreed to the requested mitigation.

The application was opposed by area residents. Ms. Ellis stated that the applicant's Critical Area report failed to make mention of a creek flowing through the property and failed to detail a buffer management plan, sediment controls,

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<sup>1</sup>The applicant originally proposed a slightly larger dwelling (31' stepped to 26' X 44'). He reduced the footprint to 26' X 40' at the hearing.

replacement planting areas, and undisturbed areas. She indicated that the site abuts open space and includes slopes exceeding 25 percent. She submitted several photographs of the site, and observed that the proposal will impact both tidal and nontidal wetlands and their buffers.

John Taylor testified that the property is bisected by a natural drainage stream flowing to the adjacent Pennington Pond, which is an inlet from the Chesapeake Bay. He suggested that the author of the Critical Area report may not have been aware of the property boundaries and that the project will have serious environmental consequences, including siltation of the stream.<sup>2</sup>

By way of rebuttal, Mr. Ford testified that the water course in question is a stormwater outfall rather than a stream. Nancy Matthews, an environmental consultant to the applicant, concurred. In any event, she stated that even if the outfall is considered a stream, the buffer and the extent of impact would not change. She contended that the property cannot be developed absent the variance and the variance represents the minimum relief.

I visited the site and the neighborhood. This is a wooded site near the end of a court in an established neighborhood of single family homes. There is a home on Pennington Court beyond the site and other development surrounding Pennington Pond. At the time of my visit, there were pockets of water in the drainage course

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<sup>2</sup>Mr. Taylor also suggested that only owners of record prior to the Critical Area law's effective date are intended to be grandfathered from the law's requirements. Ms. Morgan indicated that pre-1985 lots retain grandfathered status even after change in ownership. Her view has been followed consistently in prior cases.

between the concrete outfall at the east side of the property and the pond.

The standards for granting variances are contained in Section 11-102.1. Under subsection (b), for a property in the Critical Area, a variance to the Critical Area program requirements may be granted if (1) due to features of the site or other circumstances, a strict implementation of the program would result in an unwarranted hardship to the applicant; (2) a literal interpretation of the program will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area; (3) the granting of the variance will not confer on the applicant any special privilege that would be denied by the program to other lands within the Critical Area; (4) the variance request is not based on circumstances resultant of actions by the applicant and does not arise from conditions relating to land use on neighboring property; and (5) the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and will be in harmony with the general spirit and intent of the program. Under subsection (c), any variance must be the minimum necessary to afford relief; and its grant may not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare.

In Anne Arundel County, Critical Area variances are measured against the unwarranted hardship standard. The issue is whether the denial of the application is a denial of "reasonable and significant use." Belvoir Farms Homeowners Association, Inc., v. North, 355 Md. 259 (1999). The factors enumerated in the variance statute

"cannot be construed individually to overrule a finding of unwarranted hardship... ."

White v. North, 356 Md. 31, (1999).

Upon review of the facts and circumstances, I will grant conditional relief to the code. The denial of a request to develop this grandfathered Critical Area lot with a single family dwelling is certainly a denial of reasonable and significant use such that the application meets the variance test of unwarranted hardship. Furthermore, the critical area variance standards are generally met. Thus, the wetlands buffer impact the site in its entirety and the grant of the variance is not a special privilege that the program denies to other lands. Nor is the request based on the applicant's actions or neighboring land use. With appropriate conditions, the variance will not adversely impact critical area resources and will harmonize with the spirit and intent of the program. The applicant is proposing a modest dwelling which is in character with the neighborhood and which will not impair adjacent property or be detrimental to the public welfare. The approval shall be subject to the conditions in the Order.<sup>3</sup>

### **ORDER**

PURSUANT to the application of Mark Ford, petitioning for a variance to permit a dwelling and well with less buffer than required; and

PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 25<sup>th</sup> day of February,

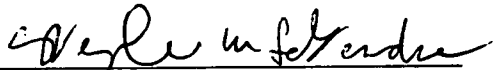
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<sup>3</sup>The applicant will be required to stake the limits of disturbance before obtaining a grading permit and will be responsible for daily maintenance of sediment control devices. The balance of the site shall be subject to a forest conservation easement. Finally, mitigation shall be imposed at the ratio of 3:1 with plantings in the buffer as a priority.

2000,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is hereby granted a variance to disturb the tidal wetlands buffer to permit a 26'X40' dwelling. The approval is conditioned as follows:

- (1) The applicant shall stake the limits of disturbance before obtaining a grading permit and is responsible for daily inspection and maintenance of sediment control devices during construction.
- (2) The balance of the site outside the limits of disturbance shall be subject to a forest conservation easement.
- (3) The applicant shall provide mitigation at a ratio of 3:1 for disturbance to the buffer with priority planting in the buffer.

  
Stephen M. LeGendre  
Administrative Hearing Officer

#### **NOTICE TO APPLICANT**

Within thirty (30) days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

Further, Section 11-102.2 of the Anne Arundel County Code states:

A variance granted under the provisions of this Article shall become void unless a building permit conforming to the plans for which the variance was granted is obtained within one year of the grant and construction is completed within two years of the grant.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this order, otherwise they will be discarded.



Judge John C. North, II  
Chairman



Ren Serey  
Executive Director

**STATE OF MARYLAND  
CHESAPEAKE BAY CRITICAL AREA COMMISSION**

45 Calvert Street, 2nd Floor, Annapolis, Maryland 21401  
(410) 260-7516 Fax: (410) 974-5338

January 27, 2000

Mr. Kevin Dooley  
Anne Arundel County Department of Planning and Code Enforcement  
2664 Riva Road, MS 6301  
Annapolis, MD 21401

RE: Variance 1999-0485-V, Mark Ford

Dear Mr. Dooley:

Thank you for providing information on the above referenced variance application. The applicant is requesting a variance to permit a dwelling and well with less setbacks and Buffer than required. The property is designated LDA and is currently undeveloped.

Provided this lot is properly grandfathered, this office does not oppose the siting of a single family dwelling on it. However, impacts must be minimized and the variance requested the minimum to provide relief. Because the 100-foot Buffer encompasses nearly the entire lot, a variance would be necessary for any development. It appears that the applicant has attempted to minimize impacts by placing the dwelling at the front building restriction line. We recommend that the applicant minimize clearing as much as possible. We further recommend mitigation at a 3:1 ratio for all disturbance within the 100-foot Buffer. The Buffer should be a priority location for mitigation plantings.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,

  
LeeAnne Chandler  
Natural Resources Planner

cc: AA06-00

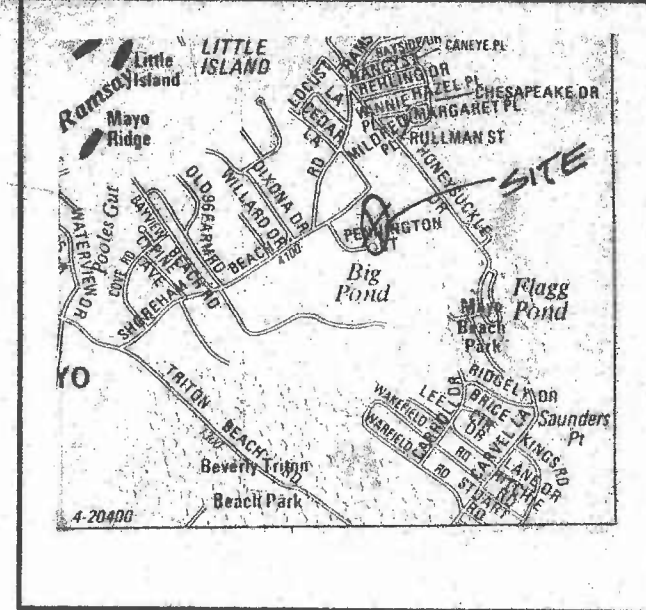
Branch Office: 31 Creamery Lane, Easton, MD 21601  
(410) 822-9047 Fax: (410) 820-5093

TTY FOR DEAF ANNAPOLIS-974-2609 D.C. METRO-586-0450



# CRITICAL AREA TABULATION

TOTAL SITE AREA = 19,870 SQ. FT.  
TOTAL WOODED AREA = 9,709 SQ. FT.  
WOODLAND CLEARING = 4,860 SQ. FT. (50%)



## VICINITY MAP

SCALE: 1"=2000'

### Mapped Soil Types

Symbol	Description	K-Factor	Hydric
MvC2	Monmouth fine sandy loam, 5-10% slopes, mod. eroded	0.43	No
MvD2	Monmouth fine sandy loam, 10-15% slopes, mod. eroded	0.43	No

Source: USDA - SCS, Soil Survey of Anne Arundel County, Maryland (February 1973)

### MAYO S.T.E.P. SYSTEM GENERAL NOTES

- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE ANNE ARUNDEL COUNTY "STANDARD DETAILS AND SPECIFICATIONS FOR CONSTRUCTION" (SEPTEMBER 1988) AND ALL REVISIONS THERETO.
- THE EXISTING UTILITIES AND OBSTRUCTIONS SHOWN ARE FROM THE BEST AVAILABLE RECORDS SHOWN AND SHALL BE VERIFIED BY THE CONTRACTOR TO HIS SATISFACTION PRIOR TO CONSTRUCTION. NECESSARY PRECAUTIONS SHALL BE TAKEN BY THE CONTRACTOR TO PROTECT EXISTING UTILITIES AND MAINS AND ANY DAMAGE TO THEM SHALL BE REPAIRED AT HIS OWN EXPENSE.
- IT SHALL BE DISTINCTLY UNDERSTOOD THAT FAILURE TO MENTION SPECIFICALLY ANY WORK WHICH WOULD NORMALLY BE REQUIRED TO COMPLETE THE PROJECT SHALL NOT RELIEVE THE CONTRACTOR OF HIS RESPONSIBILITY TO PERFORM SUCH WORK.
- THE CONTRACTOR SHALL NOTIFY MISS UTILITY (800)257-7777 FIVE (5) WORKING DAYS BEFORE STARTING WORK ON THESE DRAWINGS.
- THE CONTRACTOR SHALL NOTIFY THE ANNE ARUNDEL COUNTY DEPARTMENT OF PUBLIC WORKS 410-222-7347 FIVE (5) WORKING DAYS PRIOR TO STARTING WORK SHOWN ON THESE DRAWINGS.
- SANITARY SEWER PIPE ELEVATIONS SHOWN ON THESE DRAWINGS REFER TO INVERTS UNLESS OTHERWISE NOTED.
- THE COMPLETE SYSTEM MUST BE TESTED PRIOR TO ACCEPTANCE BY THE APPLICABLE SUB-CONTRACTOR AND MUST GUARANTEE THEIR WORKMANSHIP FOR ONE YEAR AFTER ACCEPTANCE BY THE DEPARTMENT OF PUBLIC WORKS.
- TRENCH BACKFILL SHALL BE COMPACTED TO AT LEAST 95 PERCENT OF THE MINIMUM DRY DENSITY DETERMINED BY THE AASHTO METHOD T-180.
- DISTURBANCE WITHIN PENNINGTON COURT MUST BE STABILIZED IMMEDIATELY USING COLD PATCH BITUMINOUS MATERIAL. PERMANENT PAVEMENT PATCHING IN THESE AREAS WITH HOT MIX BITUMINOUS MATERIAL MUST BE COMPLETED WITHIN 14-30 DAYS TO MATCH EXISTING PAVEMENT SECTION OF THE ROAD.
- THIS PLAN DOES NOT CONTAIN THE NECESSARY COMPONENTS TO SATISFY THE O.S.H.A. REQUIREMENTS FOR EXCAVATION/TRENCHING SAFETY. THE CONTRACTOR IS RESPONSIBILITY FOR THE SAFETY OF THIS PROJECT.

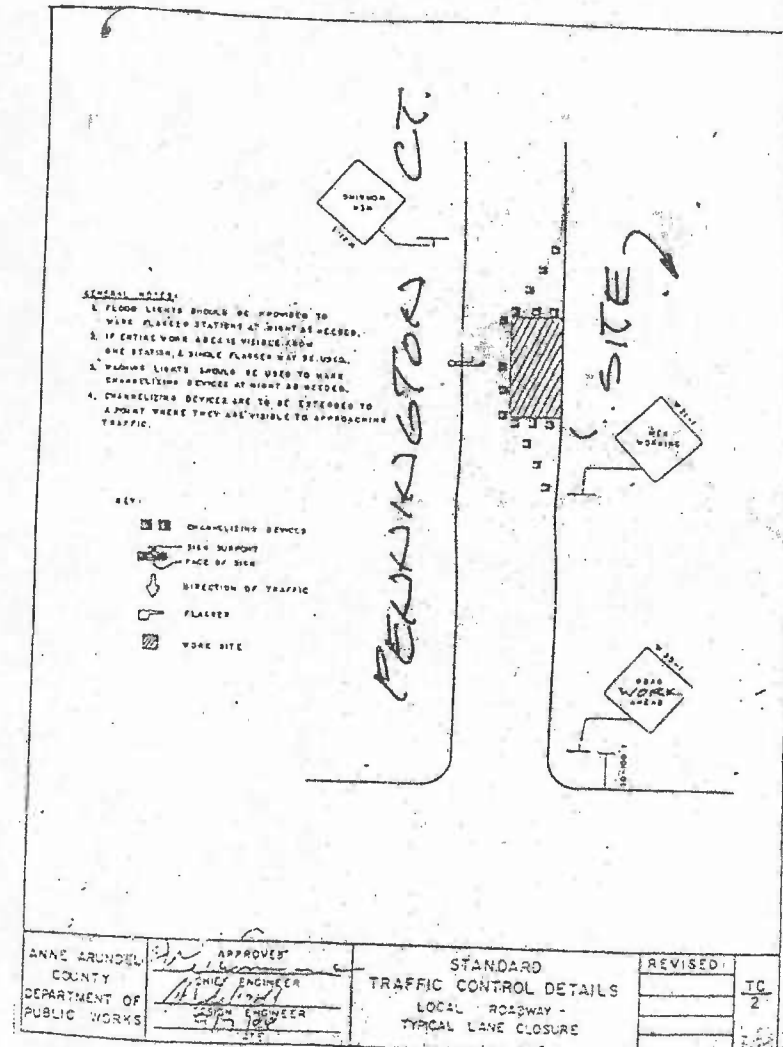
- CONTRACT THE INSPECTION DIVISION 410-222-7347 48 HOURS PRIOR TO THE START OF WORK TO ARRANGE A PRE-CONSTRUCTION MEETING.
- EXCAVATE FOR SEPTIC TANK TO UNDISTURBED EARTH. INSTALL TANK AND MASONRY UNIT (CMU) ANCHORS AND BACKFILL AS PER STANDARD NOTES AND DETAILS.
- EXCAVATE TRENCHES FOR THE 4" PVC INLET PIPE AND 4" PVC DISCHARGE PIPE.
- INSTALL PIPES, MAKE CONNECTIONS AND BACKFILL TRENCHES PER THE DEPARTMENT OF PUBLIC WORKS STANDARDS.
- PRESSURE TEST THE TANK AND PIPING AFTER INSTALLATION.
- CONDUCT COMPLETE SYSTEM TEST AND OBTAIN DEPARTMENT OF PUBLIC WORKS APPROVAL.

APPROVED FOR USE IN THE PUBLIC WORKS AGREEMENT FOR THE HEREON LOTS SANITARY SEWER SYSTEM.

APPROVED BY \_\_\_\_\_ DATE \_\_\_\_\_

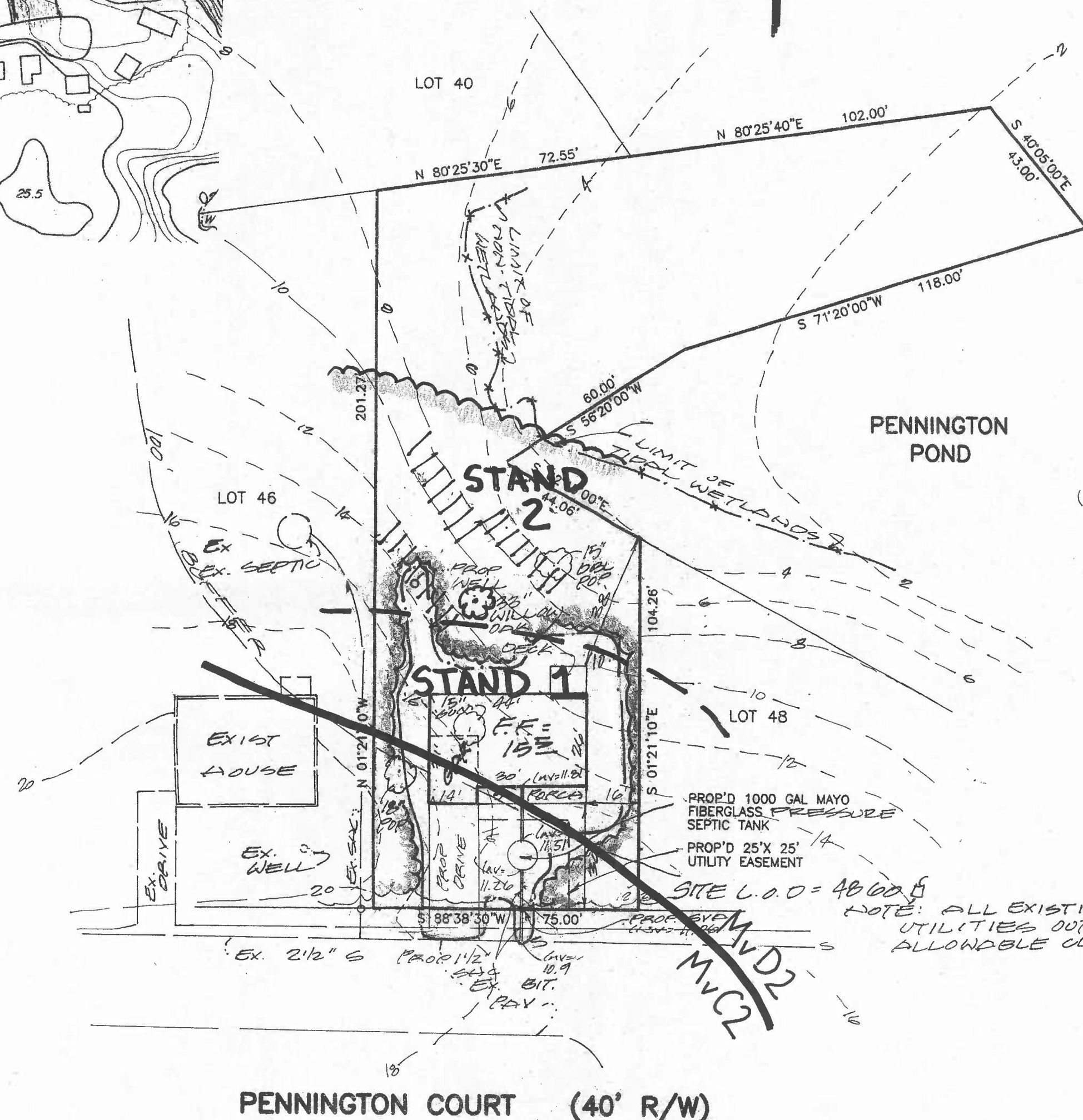
## DRAINAGE AREA MAP

SCALE: 1"=200'



### KEY

- MvD2
- MvC2
- MAPPED SOIL BOUNDARY
- FOREST STAND BOUNDARY
- STEEP SLOPES



PENNINGTON COURT (40' R/W)

PLAN  
SCALE: 1"=30'

(See Critical Area Report prepared by McCarthy & Associates, Inc., dated November 1999 for additional details)

B0214 0602

## CRITICAL AREA PLAN

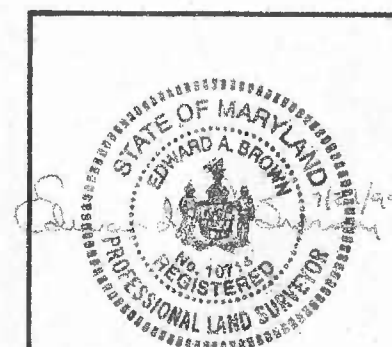
MAYO S.T.E.P. SYSTEM

LOT 47  
WEST SHOREHAM  
PLAT 2

FIRST DISTRICT  
ANNE ARUNDEL COUNTY, MARYLAND

SCALE: AS NOTED  
DATE: FEB 1999  
DRAWN BY: JAA  
CHECKED BY: EAB  
JOB NO.: 99-234  
SHEET 11 OF 1

ED BROWN &  
ASSOCIATES, INC.  
LAND SURVEYORS - LAND PLANNERS  
DEVELOPMENT CONSULTANTS  
19 LORETTA AVENUE  
ANNAPOLIS, MARYLAND 21401  
ANNAPOLIS (410)266-6199 BALTIMORE (410)841-0119



NO	DESCRIPTION	BY	DATE

REVISIONS